

Attorney for: Plaintiff

**IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

EMERENCIANA PETER- PALICAN,)	CIVIL ACTION NO. 07-0022
)	
)	
	Plaintiff,) DECLARATION OF PLAINTIFF
)	IN SUPPORT OF MOTION FOR
vs.)	PARTIAL SUMMARY JUDGMENT
)	
GOVERNMENT OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	
and TIMOTHY P. VILLAGOMEZ, in his official and individual capacities,)	Date :
)	Time:
)	Judge: A. Munson
)	
Defendants.)	
)	

Comes now Emerenciana Peter-Palican and declares under penalty of perjury that the following information is true and correct to the best of her knowledge.

1. That I am the plaintiff in this action, have personal knowledge of the facts set forth below and if called upon to testify would testify accordingly.

2. That I was appointed to the position of the Governor's Special Assistant for Women's Affairs on April 5, 2002 by Governor Juan N. Babauta, a true and correct copy

3. That subsequent to my appointment a “Request For Personnel Action” was

issued regarding my appointment, attached as Exhibit 2, and a “Notification of Personnel Action”, attached as Exhibit 3, neither of which I signed.

4. That I did sign the “Conditions of Employment”, which are attached as Exhibit

4.

5. That after I was appointed as the Governor’s Special Assistant For Women’s

Affairs and Exhibits 2, 3, and 4 were signed, trial was held in D.C.N.M.I. Civil No. 00-

0024, at the conclusion of which, and after the jury had been discharged, I was present in

court when Judge Munson asked if there were any other matters to be considered. Present

besides myself were my attorney, Douglas F. Cushnie, the government attorney, Allan

Dollison, and Juan I. Tenorio, Acting Personnel Director, who had testified for the

government at trial.

6. That at that time I stated that I wanted my civil service position back with a

lateral transfer. Mr. Dollison then said “Mrs. Palican are you going to give up the special

assistant position for a civil service position.” I said “Yes, because I thought I was

protected in civil service and then we ended up in here.” Mr. Dollison then said, “[B]ut

your special assistant position is also protected under the constitution.” I said “Oh, I

didn’t know that.” Judge Munson, addressing Mr. Dollison, then asked isn’t this position

just effective under the Babauta-Benavente administration. Mr. Dollison then said “no,

then said words to the effect that if this case arises again will the Attorney General's

Office represent Mrs. Palican. Mr. Dollison then said "Yes".

7. That I did not sign any document that was represented to me nor was I otherwise informed that my appointment as the Governor's Special Assistant for Women's Affairs would expire or could be terminated for other than cause as set forth in Article III, §22 of the Commonwealth Constitution.

8. That attached as Exhibit 5, is a true and correct copy of a letter dated February 6, 2006 addressed to me from the Hon. Timothy P. Villagomez, Acting Governor.

9. That attached as Exhibit 6, is a true and correct copy of a letter dated March 8, 2006 from me to the Hon. Timothy P. Villagomez, Lieutenant Governor.

10. That at no time did I receive any notice that I was terminated from my position for cause, nor was I afforded any hearing regarding my termination.

11. That I was ordered to vacate my office at Capitol Hill by April 8, 2006 or I would be physically removed from that office.

12. That I did vacate the office on April 15, 2006.

Executed this 22nd day of December, 2007, at Saipan, Commonwealth of the Northern Mariana Islands.


Emerenciana Peter Palican

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



Juan N. Babauta
Governor

Diego T. Benavente
Lieutenant Governor

05 APR 2002

Ms. Emerenciana Peter-Palican
P.O. 1061
Saipan, MP 96950

Dear Ms. Palican:

This is to inform you that, pursuant to Article III, Section 22 of our Constitution, I am appointing you to the position of Special Assistant for Women's Affairs. This appointment does not require the advice and consent of the Senate and will take effect April 8, 2002.

As an appointee of the Governor, pursuant to 1 CMC §8511, you are required to immediately file a statement of financial interests with the Public Auditor (form enclosed).

The Lt. Governor and I have confidence in your abilities and look forward to working closely with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Juan N. Babauta".

JUAN N. BABAUTA

Enclosure

CC: All Department and Activity Heads



Exhibit 1



OFFICE OF THE GOVERNOR
OFFICE OF THE PERSONNEL MANAGEMENT
P.O. BOX 5153 CHRB, SAIPAN, MP 96950-5153
TEL. NOS.: (670) 234-6925 / 6958 / 8036
FAX NO.: (670) 234-1013

APR 15
C&C
1075
4/15/02

REQUEST FOR PERSONNEL ACTION

OPM 01
PART I. REQUESTING OFFICE
NAME (CAPS) Last, First, Middle

PALICAN, Emerenciana P.

EMPLOYEE NO.

SOCIAL SECURITY NO.

BIRTHDATE

75477

576-10-9705

01/23/55

PERSONNEL ACTION REQUESTED

Service

Exempt Appointment (NTE: 04/08/06)

E

AUTHORITY:

1 CMC Sec. P131
(a)(6) as amended

PROPOSED EFFECTIVE DATE

04/08/02

by PL 131

PL/STEP:

BI-WEEKLY:

PER ANNUM:

DIFFERENTIAL:

FLSA: EXEMPT / COVERED

FROM POSITION TITLE:

OCCUPATION CLASS CODE:

DUTY STATION:

DIVISION:

DEPARTMENT:

Enter 5/22/02

TO POSITION TITLE: Special Assistant for Womens' Affairs

PL/STEP: Ungraded

OCCUPATION CLASS CODE: 9117

BI-WEEKLY: \$1,661.54

DUTY STATION: Saipan

PER ANNUM: \$43,200.00

DIVISION: Womens' Affairs Office

DIFFERENTIAL: NA

DEPARTMENT: Office of the Governor

FLSA: EXEMPT / COVERED

REQUESTED BY: JUAN N. BABAUTA

REQUEST APPROVED BY:

JUAN N. BABAUTA

TITLE: Governor

DATE

Signature

TITLE: Governor

DATE

REMARKS BY REQUESTING OFFICE:

See Appointment Letter from the Governor

CONTACT PERSON: Keko

TEL. NO. 664-2245

FUNDING
ACCT. NO.:

1260

APPROVED BY: Joaquin G. Blanco

Frankie Villanueva

SA-OMB

DATE

SEC. FINANCE

DATE

PERSONNEL OFFICE USE ONLY

POSITION OCCUPIED BY:

 RECOMMENDED NOT RECOMMENDED

REASON:

Francisco J. Ado

05/21/02

 CIVIL SERVICE EXCEPTED SERVICE

VICE: Tereseyo, Ana

INITIALS

DATE

5/20/02

CHIEF, CLASSIFICATION & COMPENSATION

DATE

CLEARANCES

 APPROVED DISAPPROVED

REASON:

Exhibit 2

Juan I. Tenorio

DATE

PERSONNEL OFFICER

DRH-06/03/02

IC

DATE

5/31/02



CIVIL SERVICE COMMISSION

OFFICE OF PERSONNEL MANAGEMENT

P.O. BOX 5153CHRB, SAIPAN, MP 96950-5153

Tel. Nos.: (670) 234-6925

(670) 234-6958

(670) 234-8036

Fax No.: (670) 234-1013

OPM-P-01 (Revised 01/14/01)

NOTIFICATION OF PERSONNEL ACTION

NAME	EMP. NO.	CITIZENSHIP	SERV. COMB. DATE	PIPER JAFFRAY
ALICAN, EMERENCIANA PETER	103224	1A	11/23/90	01/23/02

SOCIAL SECURITY NUMBER	CONTRACT NO.	GROUP HEALTH INC.	GROUP LIFE INS.
576-10-9705		COVERED 202	COVERED

ACTION: EXCEPTED SERV. APPT. NTE: 04/08/02 EFFECTIVE DATE: 04/08/02

FROM POSITION:

PD NO.	BI-WEEKLY	:	\$.00
SL/STEP	PER-ANNUM	:	\$.00
DUITY STATION :	DIFFERENTIAL :		
DEPARTMENT :			
DIVISION :			

TO POSITION: SPECIAL ASST/WOMEN'S AFFAIRS	BI-WEEKLY	:	\$1,661.54
PD NO. : 9117	PER-ANNUM	:	\$43,200.00
SL/STEP : UNGRADED	DIFFERENTIAL :		
DUITY STATION : Saipan			
DEPARTMENT : Office of the Governor			
DIVISION : Women's Affairs Office Division			

HOURS OF LEAVE PER PAY PERIOD: ANNUAL LEAVE = 8 SICK LEAVE = 4

ACCOUNTS CHARGEABLE : 1260.61100

SUBJECT TO: CNMI INCOME TAX: YES CNMI RETIREMENT: YES

OVERTIME UNDER FLSA REGULATION: EXEMPT

EXEMPT--NOT ELIGIBLE FOR OVERTIME PAYMENT

COVERED--ELIGIBLE FOR OVERTIME PAYMENT

REMARKS:

REF: PER OPM-P-01 DATED 05/21/02 AS PER 1 CMC SECTION 6131(A)(6) AS AMENDED BY PUBLIC LAW 13-1.

MANDATORY RETIREMENT MEMBERSHIP PER PUBLIC LAW 6-17.

DISTRIBUTION:

1. Employee - White
2. Personnel - Green
3. Payroll - Yellow
4. Department Head - Pink
5. Civil Service Commission - Blue
6. Budget - Golden Rod
7. Retirement Fund - Green

SIGNATURE: *Janice A. Peter*

Exhibit

3

DATE

PERSONNEL OFFICER

CONDITIONS OF EMPLOYMENT

(Local Hire)

The following are conditions pertaining to the employment contract. The employee must read these terms before signing the contract. The signing of the contract will show assent to each and every one of the terms set out below. The employee shall comply with the Excepted Service Regulations.

1. PRE-EMPLOYMENT CONDITIONS STANDARDS:

- (A) The employer requires that all persons employed by the CNMI be certified as physically capable of performing the duties of the position. They must be free from communicable diseases and any present of potential medical condition which would be detrimental to successful performance of duty or the health of other Employees, or reflect discredit upon the Employer.
- (B) The Employee shall be examined by medical personnel authorized by the Employer to conduct such examinations for employment purposes, and the results shall be recorded on forms prescribed by the Personnel Officer.

2. COMPENSATION AND WORK SCHEDULE:

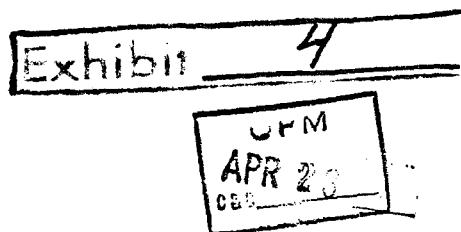
- (A) The Employee shall earn his salary on the basis of a twelve month (12) work year consisting of twenty-six (26) bi-weekly pay periods. In cases of early termination, the gross pay is reduced by the period in which no service is rendered.
- (B) Overtime: The Employer's workday and workweek may vary from time to time according to the needs of the Government. Every effort will be made to maintain a reasonable five (5) day, forty (40) hour workweek. As noted below, this position is either covered under Fair Labor Standards Act of 1938 (FLSA) for overtime and compensatory time purposes or is exempt from such coverage. FLSA covered positions are subject to Part IV.B16 of the Personnel Service System Rules and Regulations (PSSRR).

THIS POSITION IS (check one):

FLSA COVERED (eligible for overtime and compensatory time)

FLSA EXEMPT (not eligible for overtime or compensatory time)

(Revised 09/13/01)



3. **MANDATORY PARTICIPATION IN RETIREMENT FUND:** Public Law 6-17, The NMI Retirement Fund Act of 1988, and as amended by Public Law 6-41, requires mandatory participation in the Retirement Fund for all government employees.

- (A) Employees who were members of the Fund before May 7, 1989, are Class II members. These members have the option of transferring to Class I members anytime. The contribution rate for Class II members is 9% of gross wages.
- (B) Employees hired on or after May 7, 1989 and employee who opted not to join the Retirement Fund before May 7, 1989, are Class I members. These employees contribute 6.5% of gross wages to the Retirement Fund.
 - (1) Class I members having less than ten (10) years of vesting service credits with the Retirement fund, will be eligible for refund of their contribution, including interest, upon separation from employment.
 - (2) Class I members are not entitled to a refund after ten (10) years of vesting service.
 - (3) Class I members having ten (10) or more years of vesting service credits have a vested right to a pension upon attaining age sixty-two (62) or meeting normal retirement eligibility.

4. **LEAVE:**

- (A) **Annual Leave:** Annual leave shall accrue to the Employee at the rate of (8) hours per pay period.
 - (1) The Employee employed in the first year of the Contract shall be entitled to use of annual Leave only after having been employed for a continuous period of ninety (90) days without a break in service.
 - (2) Annual Leave may be used only upon prior written approval of the Employee's immediate supervisor.
 - (3) The Employee who terminates his employment at the completion of the present employment contract or resigns, and is departing the duty station on final separation, will receive on the next regular pay day a lump-sum payment of all unused annual leave at the current hourly rate, based on twenty-six (26) bi-weekly pay periods and 2,080 hours in a work-year, provided the necessary documents of clearance are received by the Northern Mariana Islands Payroll Office.

(Revised 09/13/01)

(4) Where an offer and acceptance for a new period of employment is agreed upon under a new employment contract, all accrued and unused Annual Leave credits from the prior contract may be paid immediately or carried over, at the election of the Employee.

(B) **Sick Leave:** Sick Leave shall accrue to the Employee at the rate of four (4) hours per pay period.

(1) The Employee is entitled to use Sick Leave from the time Sick Leave is first earned.

(2) Any absence on sick leave where the Employee misses more than three (3) continuous days of work must have the illness verified by a note from a medical doctor in order to claim sick Leave.

(3) Upon completion of the present employment contract or termination of employment, which ever occurs first, no payment will be made for accrued and unused Sick Leave credits.

(4) Where an offer and acceptance for a new period of employment is agreed upon under a new contract, all accrued and unused Sick Leave credits from the prior contract will be carried over.

(5) Sick Leave may be accumulated without limit.

(C) **Leave Without Pay:** Leave Without Pay may be taken only after obtaining the written approval of the Employee's immediate supervisor.

(D) **Administrative Leave With Pay:** Administrative Leave Pay is granted only in exceptional circumstances such as typhoons and state funerals, by the Governor.

(E) **Holidays:** The Employee shall be released from work on all legal holidays, except during emergencies, without loss of pay or charge to leave account.

(Revised 09/13/01)

(F) **Advance Leave:** Where for good reason, the Employee requires an advance of Annual or Sick Leave, the Personnel Officer may grant leave in advance up to a maximum of one-half (½) of the total earnable leave credits for one (1) year from the date the request is approved or for the remainder of the employment contract, whichever is shorter.

5. **JOB DESCRIPTION:**

In order to be a valid and binding agreement, this contract (unless it is for renewal) must have attached a detailed job description of the Employee, a complete employment application and other documents such as college transcript.

6. **OUTSIDE EMPLOYMENT:** The Employee may provide services to persons other than the Employer only if:

- (A) the Employee receives the prior written approval of the Employee's immediate supervisor, and
- (B) the outside employment is not, nor does it appear to be, adverse to the interests of the Government.

7. **INSURANCE:**

- (A) **Workmen's Compensation:** In the event of on-the-job related injury or illness, the Employee shall be entitled to benefits under the Workmen's Compensation Insurance Contract in force for the Northern Mariana Islands Government. The Employee is responsible for reporting any on-the-job work related injury or illness to the Employee's supervisor as soon as possible.
- (B) **Health & Life Insurance:** Group Health and Group Life Insurance Coverage is available for those who wish to apply. The Government will pay part of the cost of this insurance, in accordance with the agreement between the Northern Mariana Islands Government and the insurance carrier.

8. **ADDITIONAL TERMS AND CONDITIONS:** Upon mutual agreement of the Employer and Employee, and approval by the Personnel Officer, placed in writing and attached to these conditions of employment, further terms may be added to this contract to the extent that they are not inconsistent with and in no way purport to amend these conditions of employment.

(Revised 09/13/01)

9. RENEWAL OF THE CONTRACT:

- (A) This contract is not automatically renewable, nor does it create any option to renew the contract.
- (B) It is wholly within the discretion of the Employer whether an offer to renew the contract should be made to the Employee. The Employer has no obligation to provide the Employee advance notice of termination of employment upon completion of this contract.
- (C) If the Employer decides not to offer a new period of employment and not to execute a new employment contract, that decision cannot be repealed, regardless of the reason, if any, for the decision.

10. EARLY TERMINATION AND RESIGNATION:**(A) Gubernatorial Appointees:**

- (1) Any Employee who is an appointee of the Governor serves at the pleasure of the Governor and may be terminated by the Governor without cause and without prior notice.
- (2) In order to terminate employment by resignation, an Employee who is a gubernatorial appointee must first give sixty days notice. The Governor may waive this requirement of advance notice.

(B) Other Excepted Service Employee:

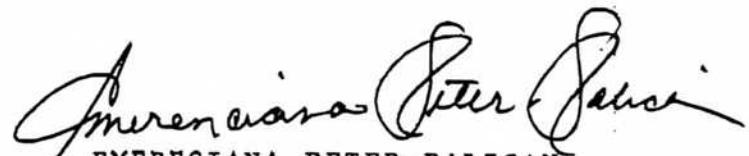
- (1) The Employer may terminate the Employee without cause upon notice sixty days in advance of termination of employment. This may be shortened only by placing a lesser number in the following blank space:

- (2) The Employer may terminate the Employee with cause upon notice seven days in advance of termination of employment.
- (3) When resigning, the Employee must give notice sixty days in advance of termination of employment. This time may be shortened only by placing a lesser number in the following blank space. _____ The Employee's appointing authority may waive this requirement of advance notice at the time of resignation.

(Revised 09/13/01)

I have read the terms and conditions of these Conditions of Employment and understood them.
By my signature I agree to abide by them as part of the terms and conditions of my employment.

Date: 4/25/02


EMERECIANA PETER-PALICAN
EMPLOYEE

For the Commonwealth of the Northern Mariana Islands:

Date: 5/21/02


JUAN I. TENORIO
Actg PERSONNEL OFFICER

(Revised 09/13/01)

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS



Benigno R. Fitial
Governor

Timothy P. Villagomez
Lieutenant Governor

Ms. Emerenciana Peter-Palican
Special Assistant for Women's Affairs
Office of the Governor
Juan A. Sablan Admin. Bldg.
Capitol Hill
Saipan, MP 96950

FEB 06 2006

Rec'd 8/09/06
11:00 am

Re: Tenure of Special Assistant for Women's Affairs

Dear Ms. Peter-Palican:

As you are aware, the office of Special Assistant for Women's Affairs (to the governor) is one filled by gubernatorial appointment, and the person occupying that office serves at the will and pleasure of the governor, as do all gubernatorial appointees. See 1 CMC § 8131(a)(6).

You were appointed to that office by letter of April 5, 2002, from then-governor Juan N. Babauta, with your appointment being effective April 8, 2002. The letter does not indicate any fixed term for your service. However, the Request for Personnel Action and the Notification of Personnel Action concerning your appointment do indicate that your appointment was for a fixed term, commencing April 8, 2002, and expiring April 8, 2006. It is not known why these documents seemingly contain a fixed term for your appointment, but the ministerial actions of those responsible for completing the paperwork necessary to effectuate your appointment cannot and do not change the legal character of your appointment.

It is the position of this administration that your appointment terminated, as a matter of law, on January 8, 2006, when this administration formally took office, and that your continuing to occupy the office of Special Assistant for Women's Affairs is contrary to Commonwealth law and custom (all of the previous occupants of the office have resigned at the conclusion of the term of the appointing governor). Nonetheless, in a spirit of compromise and conciliation, the administration has decided to refrain from taking legal action against you until after April 8, 2006, should you continue with your occupancy of the office.

You are, therefore, informed that you must vacate the office of Special Assistant for Women's Affairs on or before April 8, 2006, or the government will take whatever legal action is appropriate.

Sincerely,


TIMOTHY P. VILLAGOMEZ
Acting Governor

Xc: Governor
Acting Director of Personnel
Acting Attorney General
Special Assistant for Administration

Exhibit 5

Special Assistant for Women's Affairs**Office of the Governor**Caller Box 10007, CK, Saipan, MP 96950
Commonwealth of the Northern Mariana Islands

March 8, 2006

COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS
OFFICE OF THE LIEUTENANT GOVERNOR
TIMOTHY P. VILLAGOMEZ

Honorable Timothy P. Villagomez
 Lieutenant Governor
 Commonwealth of the Northern Mariana Islands
 Caller Box 10007 C.K.
 Saipan, M.P. 96950

MAR 10 2006

RECEIVED

By: OPA
Time: 4:41 PM

Re: Tenure of Special Assistant for Women's Affairs

Dear Lt. Governor Villagomez:

I have received your letter of February 6, 2006 notifying me of the termination of my position as Special Assistant for Women's Affairs. You have referred to 1CMC §813 (a)(6) in support of the administration's position that the Special Assistant for women's Affairs serves at the pleasure of the governor.

Article II, Section 22, of the Commonwealth Constitution created the Office of Special Assistant to the Governor for Women's Affairs. Section 22.a) provides that the "special assistant may be removed only for cause." I am informed that the Constitution takes precedence over any statute. The Office of the Attorney General, during civil rights action against the government acknowledged in the U.S. District Court that the holder of the special assistant position may only be terminated for cause. You have not set forth any legal cause to terminate my appointment

Your letter also refers to a Notification of Personnel Action as a basis for limiting my appointment. The NOPA document was not signed by me, is solely for payroll purposes, and to my understanding will not supercede the Commonwealth Constitution. The comments by the Attorney General's Office mentioned above were made after the NOPA was issued.

With the foregoing being said, I do understand that an incoming administration desires to appoint its own political supporters to various positions. In light of this, I am prepared to discuss with you amicable resolution of this matter.

Sincerely Yours,

Emerenciana "Emi" Peter-Palican

Exhibit 6